

REMARKS

Applicant thanks the Examiner for the specificity of the comments of the current Office Action. Claims 10 and 11 are pending in the application. Claims 10 and 11 have been rejected. Claims 10-11 have been amended, and claims 12-21 have been added. Claim 10 is independent.

35 U.S.C. §102 POSTON REJECTION

Claim 10 has been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Design Patent No. D457,277 to Poston. In formulating this rejection, the examiner asserts that Figure 5 illustrates a plunger and handle covered by a container, which includes a vegetation holder at its upper portion where a flower is depicted.

Independent claim 10 has been amended to clarify the invention. Specifically, among other things, claim 10 has been amended to include a plurality of vegetation holders, designed to position vegetation on the cover to substantially hide the appearance and shape of the cover. Applicant respectfully submits that Poston fails to teach this feature.

It is well settled that under 35 U.S.C. §102 “an invention is anticipated if...all the claim limitations [are] shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim. The identical invention must be shown in as complete detail as is contained in the patent claim.” Richardson v. Suzuki Motor Co., Ltd., 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Only if each limitation is literally disclosed by the prior art reference is the claim anticipated. As discussed above, because Poston fails to teach a plurality of vegetation holders, designed to position vegetation on the cover to substantially hide the appearance and shape of the cover, the claim is not anticipated. Consequently, applicant

respectfully submits that the rejection under §102(b) is improper. Reconsideration is respectfully submitted.

35 U.S.C. §103(a) POSTON/KENT REJECTION

Claim 11 has been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Design Patent No. D457,277 to Poston, in view of U.S. Patent No. 6,038,709 to Kent. In formulating this rejection, the Examiner relies on Figure 8 of Kent for teaching a decorative overlay 315 on a plunger holder where seasonal artwork “depicting various holiday scenes” is seen. The Examiner further asserts that this teaches removal of one scene in favor of another, and that to provide for the removal of the flower of Poston in light of these teachings would have been obvious to the ordinary artisan. Applicant respectfully disagrees.

Applicant respectfully submits that neither Poston nor Kent includes a plurality of vegetation holders, designed to position vegetation on the cover to substantially hide the appearance and shape of the cover. Although Kent teaches a decorative overlay, the decorative overlay does not “hide” the appearance of the cover. Regardless of the “scene” applied to the Kent cover, the cover is still clearly a toilet plunger holder. Additionally, clearly, a flower placed on the top of a handle of the Poston cover does not “hide” the appearance of the cover either. Consequently, Applicant submits that the claim limitations of the present invention are not taught by the prior art references.

Applicant submits that the PTO has the burden to establish a *prima facie* case of obviousness. In re Fine, 837 F.2d, 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); MPEP §2142. “To establish *prima facie* obviousness of a claimed invention, all the claimed limitations

must be taught or suggested by the prior art.” MPEP §2143.03. As discussed above, neither Poston nor Kent include a plurality of vegetation holders, designed to position vegetation on the cover to substantially hide the appearance and shape of the cover. The cover cannot be substantially hidden using the Poston and Kent disclosures. Because the prior art does not teach the claim limitations, the Applicant submits that the Examiner has not established a *prima facie* case of obviousness.

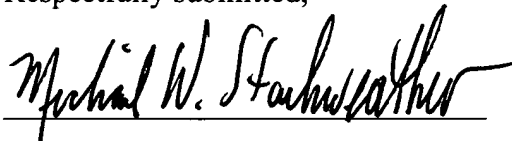
The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 U.S.P.Q. 871, 881 (CCPA 1981). The combination of Poston and Kent do not teach or suggest claim limitations which are basic to the practice of the present invention. Thus, one of ordinary skill in the art would be unable to practice the present invention based on the cited prior art.

“If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” MPEP §2142. The Applicant has nevertheless sought to explain the distinctive features of the present invention from that of the cited prior art by citing specifically to the application and to the prior art.

CONCLUSION

The claims are believed to be in a condition for allowance. Should the Examiner wish to discuss any of the present amendments, Applicant invites the Examiner to do so by telephone conference.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael W. Starkweather", written over a horizontal line.

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